

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

JOHN WESLEY BORDLEY, JR.,	:	
	:	C.A. No. 09A-02-008 WLW
Appellant,	:	
	:	
v.	:	
	:	
MARK COULBOURNE, INC. and	:	
UNEMPLOYMENT INSURANCE	:	
APPEAL BOARD,	:	
	:	
Appellee.	:	

Submitted: May 12, 2010

Decided: August 4, 2010

**ORDER**

Upon an Appeal of the Decision of the  
Unemployment Insurance Appeal Board.  
*Denied.*

Mr. John Wesley Bordley, Jr., *pro se.*

Mark Coulbourne, *pro se.*

WITHAM, R.J.

*Introduction*

This is a *pro se* appeal by John Wesley Bordley, Jr. (“Bordley”) from the February 19, 2009 decision of the Unemployment Insurance Appeal Board (the “Board” or “UIAB”). The Board affirmed a determination by the Appeals Referee (the “Referee”) that Bordley is disqualified from receiving unemployment benefits due to his discharge for just cause, pursuant to 19 *Del. C.* § 3314(2).

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***Decision of the UIAB***

Bordley was employed by Mark Coulbourne, Inc. (“Employer”) from August 16, 2004 until October 8, 2008. His duties included driving a dump truck. On October 8, 2008, Bordley was discharged for being a “no call/no show.”

The Board concluded that Bordley was discharged after he failed to timely show up for work on October 7, 2008. The Board acknowledged Bordley’s contention that he tried to call, but, given his history of no call/no show episodes, he was discharged. The Board concluded that, “[t]he evidence shows a long pattern of lateness and several no show - no call incidents.”<sup>1</sup> The Board further noted that, “[Bordley] was warned; and the conduct gave the Employer just cause to terminate.”<sup>2</sup> Bordley filed an appeal with this Court on February 27, 2009.

***Standard of Review***

This Court’s review of a decision of the Unemployment Insurance Appeals Board is limited to a determination of whether there is sufficient substantial evidence

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<sup>1</sup> *Bordley v. Mark Coulbourne, Inc.*, UIAB Appeal Docket No. 40072506 (Feb. 19, 2009), *aff’g* Decision of Appeals Referee (Dec. 10, 2008).

<sup>2</sup> *Id.*

in the record to support the Board's findings, and that such findings are free from legal error.<sup>3</sup> Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>4</sup> The Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>5</sup> An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>6</sup>

### ***Discussion***

Section 3314 of Title 19 of the Delaware Code provides, in pertinent part, that an individual shall be disqualified for benefits, "[f]or the week in which the individual was discharged from the individual's work for just cause in connection with the individual's work . . . ."<sup>7</sup> "Just cause" refers to a "wilful [sic] or wanton act in violation of either the employer's interest, or of the employee's duties, or of the employee's expected standard of conduct."<sup>8</sup>

Bordley concedes that he was late for work on October 7, 2008. He, however,

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<sup>3</sup> *Employment Ins. Appeals Bd. of the Dep't of Labor v. Duncan*, 337 A.2d 308, 309 (Del. 1975); *Longobardi v. Unemployment Ins. Appeals Bd.*, 287 A.2d 690, 692 (Del. Super. Ct. 1971).

<sup>4</sup> *Oceanport Indus. v. Wilmington Stevedores*, 636 A.2d 892, 899 (Del. 1994); *Battista v. Chrysler Corp.*, 517 A.2d 295, 297 (Del. Super. Ct. 1986).

<sup>5</sup> *Geegan v. Unemployment Comp. Comm'n*, 76 A.2d 116, 117 (Del. Super. Ct. 1950).

<sup>6</sup> *Johnson v. Chrysler Corp.*, 213 A.2d 64, 66 (Del. 1965).

<sup>7</sup> 19 Del C. § 3314(2).

<sup>8</sup> *Boughton v. Div. of Unemployment Ins. of Dep't of Labor*, 300 A.2d 25, 26 (Del. Super. Ct. 1972), quoting *Abex Corp. v. Todd*, 235 A.2d 271 (Del. Super. Ct. 1967).

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asserts that he did in fact call with notice of his tardiness. Bordley maintains that a witness can confirm that he called both in December 2007 and October 2008. Despite Bordley's assertions, as noted above, the only issue before this Court is whether the Board's findings are supported by substantial evidence and free of legal error. Again, the Board's findings are conclusive and will be affirmed if supported by "competent evidence having probative value."<sup>9</sup> An appellate court does not weigh the evidence, determine questions of credibility, or make its own factual findings.<sup>10</sup>

The record indicates that Bordley had a history of tardiness and so-called "no call/no shows." The Board reviewed this history and, based upon the evidence, concluded that Employer had just cause to discharge Bordley. The Board decision is not a close call. Therefore, this Court finds that the Board's decision is supported by substantial evidence and free of legal error.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Hon. William L. Witham, Jr.

WLW/dmh

oc: Prothonotary

xc: Mr. John Wesley Bordley, Jr.  
Mr. Mark Coulbourne

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<sup>9</sup> *Geegan*, 76 A.2d at 117.

<sup>10</sup> *Johnson*, 213 A.2d at 66.